

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NICOLE BELL,

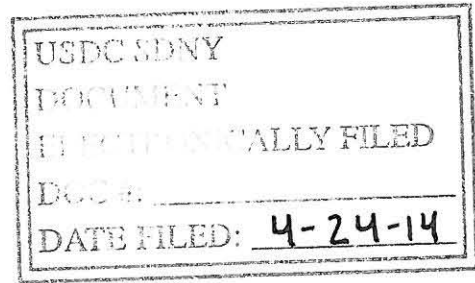
Plaintiff,

- against -

MONTEFIORE MEDICAL CENTER and
1199 SEIU,

Defendants.
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HONORABLE PAUL A. CROTTY, United States District Judge:



12 Civ. 737 (PAC) (JCF)

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

On January 26, 2012, *pro se* Plaintiff Nicole Bell (“Plaintiff”) filed a complaint against her former employer, Montefiore Medical Center, and the union that represented her, 1199 SEIU (collectively, “Defendants”), alleging that Defendants violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. § 12112 *et seq.*, by discriminating against her on the basis of her race, color, gender, and disability. On March 21, 2012, the Court referred the matter to Magistrate Judge James C. Francis. Plaintiff subsequently failed to participate in two court conferences, failed to comply with an order requiring that she provide all outstanding discovery, and refused to appear for her deposition. As a result, Defendants moved to dismiss the complaint on September 18, 2013 for failure to prosecute. Magistrate Judge Francis denied the motion without prejudice but ordered Plaintiff to attend her deposition and to provide all outstanding discovery. *See* Order, ECF No. 45. After Plaintiff again failed to comply with Magistrate Judge Francis’s discovery order, Defendants renewed their motion to dismiss on December 6, 2013. Bell did not oppose the motion.

On December 31, 2013, Magistrate Judge Francis issued a Report and Recommendation (“R&R”) that Defendants’ motion be granted. *See* Report and Recommendation, ECF No. 53.

The Federal Rules of Civil Procedure allow a court to dismiss an action if a party fails to obey a court order or to prosecute its case. *See* Fed. R. Civ. P. 16(f)(1); Fed. R. Civ. P. 37(b)(2)(A)(v); Fed. R. Civ. P. 41(b). To determine whether dismissal is appropriate, courts consider:

(1) the duration of the plaintiff's failure to comply with the court order; (2) whether the plaintiff was on notice that failure to comply would result in dismissal; (3) whether the defendants are likely to be prejudiced by further delay in the proceedings; (4) a balancing of the court's interest in managing its docket with the plaintiff's interest in receiving a fair chance to be heard; and (5) whether the judge has adequately considered a sanction less dramatic than dismissal.


Spencer v. Doe, 139 F.3d 107, 112-13 (2d Cir. 1998). Magistrate Judge Francis determined that each of these factors weighs in favor of dismissal and therefore recommended that the complaint be dismissed.

The Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court may adopt those portions of the R&R to which no timely objection has been made, so long as there is no clear error on the face of the record. *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). After being served with a copy of Magistrate Judge Francis's recommended disposition, Plaintiff had fourteen days to file specific written objections to the proposed findings and recommendations. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Plaintiff's failure to file timely objections to the R&R results in waiver of those objections. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985). Thus, the Court reviews the R&R for clear error. Having found none, the Court hereby adopts the R&R in full.

Accordingly, Defendants' motion to dismiss is GRANTED. Pursuant to 28 U.S.C 1915(a), any appeal from this order would not be taken in good faith. The Clerk of Court is directed to enter judgment and to close this case.

Dated: New York, New York
April 24, 2014

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copies mailed by chambers to:

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